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People's
Choice-TV®

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Matthew Oristano

Chairman

June 27, 1994

Ms. Nina M. Sandman
Federal Communications Commission
Cable Services Bureau, Room 502
2033 M Street NW
Washington, DC 20554

Re: Notice of Inquiry CS Docket No. 94-48

Dear Ms. Sandman:

On behalf of People's Choice TV Corporation, I am pleased to submit our comments to the Notice of Inquiry regarding the Cable Act of 1992 and the status of competition in the market for video programming. I hope you will enjoy reading about our company's experience in this interesting industry.

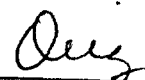
Please do not hesitate to call if you should have any questions concerning this filing.

Sincerely,



Matthew Oristano

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Implementation of Section 19)	
of the Cable Television)	
Consumer Protection and)	
Competition Act of 1992)	
)	CS Docket No. 94-48
)	
Annual Assessment of the)	
Status of Competition in the)	
Market for the Delivery of)	
Video Programming)	

COMMENTS OF
PEOPLE'S CHOICE TV CORPORATION

People's Choice TV Corporation hereby submits its comments in response to the Notice of Inquiry ("NOI") which requests information to allow the Commission to prepare a preliminary analysis of the development of competition to cable television by various emerging alternative technologies. Specifically, People's Choice TV submits these comments in response to the Commission's request for information regarding the development of the wireless cable industry. We have attempted to answer all of the Commission's specific questions and we have organized our responses using several broad themes.

Anti-Competitive Behavior

We have encountered several examples of continuing anti-competitive behavior among cable operators. Overall, they seem unbowed by the cable regulations, and the recent NCTA convention in New Orleans was rife with cable operators complaining that the 1992 Cable Act was perpetrated on them by a vindictive congress for no good reason.

In the area of programming, the cable industry has agreed with Rupert Murdoch a pledge that his "FX" cable service be exclusive. This was in spite of the fact the Fox had more than enough resources on its own, together with its retransmission leverage, to successfully launch such a service. Other, smaller non-integrated programmers have also distanced themselves from wireless cable, in the hopes that the cable industry will embrace them. The cable industry now intends to use exclusivity as a major weapon against competition.

In the area of digital compression, we have seen TCI's plans for its master industry authorization center come under attack as anti-competitive, even from other cable operators. TCI has proposed that it will handle the digitization of programmer satellite feeds, and then cable (but not wireless cable) operators would come to TCI for central authorization of reception of digitized feeds. Should this be allowed to occur, and should any programmer decide not to digitize its own feed because TCI will do it for them, then presumably wireless cable would no longer have economical access to that programming source, without spending extra millions of dollars on digitizing equipment. The FCC should prevent this from occurring, by interpreting the Cable Act so that cable control of any portion of the programming feed must be made available to competitors. Otherwise, TCI will be able to choke off the programming supply at the source.

Impediments to Competition

Cable operators are testing door-to-door marketing offers to customers, that are not properly applied to all customers as per federal regulation. In Tucson, a cable operator offered to "buy back" the off-air antenna of PCTV customers who switched to cable. In other words, PCTV customers would get a cash subsidy to get cable. To our knowledge, this offer was not made to the cable system's franchise as whole, or to any consumer who had a non-PCTV off-air antenna. In this way the cable operator attempted to circumvent the requirement that the competition's customers not be "headhunted" with predatory offers. A cable operator can do many things with door-to-door offers that are not publicized to the general populace. The FCC should require that any competitive door-to-door offer be publicized to the cable operator's franchise as a whole, rather than letting the doors knocked with a special offer be coincidentally weighted with competitors' customers.

In the area of SMATV, the FCC's regulations prevent a cable operator from purchasing or owning SMATV operations in its area. We have seen cable operators attempt to circumvent this regulation by not buying the SMATV "operation", but encouraging the SMATV operator to turn in its contract to the landlord and selling only "the wiring" to the cable operator for, coincidentally, the same price for what the going SMATV operation would have sold. This is clearly against the intent of the cable act, and the FCC should move to plug this loophole.

In Phoenix Arizona, cable operator Dimension (a subsidiary of Times Mirror) attempted to interfere with an RFP process for Arizona State University to award an ITFS contract to PCTV. PCTV was the only valid applicant to RFP, and submitted an extensive and complete response, within the deadline imposed by ASU. Dimension faxed in a response thirty minutes after the deadline, and the response itself was

extremely incomplete. It was rejected as invalid by ASU, and PCTV was awarded the contract. Dimension then mounted spurious appeals in order to derail the process and slow the launch of PCTV's Phoenix system.

FCC regulations prevent cable operators from leasing wireless cable frequencies in their own markets. In more than one case besides Phoenix, however, cable operators have evaded the intent of this regulation by proposing to ITFS licensees not to lease the channels, but rather just to give the ITFS entity money **not** to lease the channels to a wireless operator. Cable operators cloak this grossly anti-competitive practice under the guise of altruistic "grants" in the interests of "furthering education". The FCC should not let itself be taken in. The average cable operator is as much an altruist as the average piranha is a vegetarian. The FCC should move immediately to plug this loophole before more wireless cable operations are impeded. The FCC should prohibit any cable operator from making any offer to any ITFS entity inside or outside its franchise area, which offer would have the effect of preventing any ITFS airtime from being leased to a wireless cable operator.

Dealings with Programmers

Since the 1992 Cable Act, behavior of the vertically integrated programmers has changed. They are overall much easier to deal with, and getting contracts and service from them has become a matter of executing standard affiliation agreements, instead of individualized and arduous negotiations. Much of the old verbiage they used about "pre-qualifying" distributors, and "credit-worthiness", and "knowing who they're doing business with" has disappeared.

In confidence, several programmers have acknowledged to PCTV that they are happy that the 1992 Cable Act passed, so that they can now sell to everyone, and no longer have to play games to appease their cable masters.

People's Choice TV believes that the consumers have benefited from now being able to access multiple vendors for pay television. In the PCTV Tucson system, cable operators have had to restrict their rate increases and improve service, as a result of competition, as opposed to regulation.

We do not see, however, any improvement in behavior on the part of the cable operators. They still are inclined to find anti-competitive ways to stifle wireless cable.

Retransmission Consent

PCTV had difficulty securing retransmission consent from the Fox affiliate in Tucson. Against the affiliate's will, the Fox network attempted to make PCTV pay \$0.25 per subscriber per month for retransmission. The Fox network claimed that "this is what cable pays". However, the cable industry gets access to FX, the Fox cable network, and cable has claimed that it pays nothing for retransmission consent, and only pays for FX. Wireless cable does not get access to FX. Thus Fox was trying to get PCTV to pay \$0.25 for what cable gets for free, i.e. retransmission. Fox officials claimed that their behavior was at the behest of TCI, which if true is also anti-competitive. After a long negotiation, the Fox affiliate was finally able to exercise its rights, and a more reasonable retransmission deal was struck with PCTV. The FCC should clarify the fact that retransmission consent is the right of the broadcast station itself, and not the network, otherwise the cable industry will exert anti-competitive pressures on the networks to withhold such rights from cable competitors.

Subscriber Demand

PCTV uses subscriber demand for subscription services as virtually its sole source of programming decisions. In a competitive environment, a video programmer cannot afford to ignore programming that customers want, if the competition carries it. The loss of even one major service could be ruinous, since wireless cable operators don't just lose viewership, they suffer expensive churn which mandates doing physical disconnects. PCTV uses TV ratings and direct customer surveys to gauge the attractiveness of programs in all its markets.

Franchising Regulations

PCTV is aware of cable operators in Tucson complaining to the city that they are subject to local franchise regulations and costs, and that we are not. We have had to answer inquiries from the city, and explain that we are subject to Federal regulation, and that while we do not pay franchise fees, we pay a like percentage of gross revenues to local educators.

People's Choice Operating Systems

Tucson System

System Launch Date	July, 1991
Channels being used	33
Channels that may be added	0
VHF/UHF Channels	4
Launch Delays	The FCC processing of our petitions and authorizations was efficient and resulted in no significant delay.
Digital Compression	We intend to use digital compression as soon as it is available, but only availability will dictate the rollout schedule. In the meantime, a hybrid system will be employed
Competitors	Jones Intercable, 50% penetration and 42 channels. Intermedia/TCI, 50% penetration, 62 channels.
Amount of Overlap	98% of territory, 280,000 homes
Homes in Signal Area	284,000 homes in signal area; 10% are subject to terrain or foliage blockage
Customers after one year	7,500
Customers after three years	22,000
Customers after five years	40,000 Projected
Charge for Basic Service	\$18.00
Competitor's Charge for Basic Service	\$24.00
Charge for a la carte channels	\$6.95
Competitor's Charge for a la carte	\$7.95 to \$11.95
SMATV or Dish operators	Small number of operators with approximately 10,000 subscribers
Is the market competitive?	Very competitive

Houston System

System Launch Date	March, 1994
Channels being used	31
Channels that may be added	2
VHF/UHF Channels	12
Launch Delays	The primary difficulty we had with the FCC was that the approval for colocation and power upgrade was delayed for approximately 12 months, and was granted after several meetings between PCTV and FCC representatives.
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	TCI and Time Warner. Each has approximately 50% penetration, and 40 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap, or about 1,100,000.
Homes in Signal Area	1,100,000 are in the coverage pattern. 25% are blocked.
Customers after one year	50,000 Projected.
Customers after three years	120,000 Projected.
Customers after five years	150,000 Projected.
Charge for Basic Service	\$20.00
Competitor's Charge for Basic Service	\$27.00
Charge for a la carte channels	\$7.95
Competitor's Charge for a la carte	\$12.00
SMATV or Dish operators	There are several SMATV operators in Houston, totaling at least 50,000 customers.
Is the market competitive?	Very competitive

St. Louis System

System Launch Date	March, 1994
Channels being used	24
Channels that may be added	9
VHF/UHF Channels	7
Launch Delays	Unfortunately, our requests for the approval for power upgrades have been delayed by the ITFS freeze for two years.
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	We compete with several cable systems, most notably TCI and Continental. Each has approximately 50% penetration, and 40 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap, about 950,000.
Homes in Signal Area	950,000 are in the coverage pattern. 25% are blocked.
Customers after one year	50,000 Projected.
Customers after three years	120,000 Projected.
Customers after five years	150,000 Projected.
Charge for Basic Service	\$20.00
Competitor's Charge for Basic Service	\$27.00
Charge for a la carte channels	\$7.95
Competitor's Charge for a la carte	\$12.00
SMATV or Dish operators	There are several SMATV operators in St. Louis, totaling at least 25,000 customers.
Is the market competitive?	Very competitive

People's Choice Developmental Systems

Phoenix

System Launch Date	We anticipate a launch date of December, 1994
Channels Under License or Lease	32
Channels that may be added	0
VHF/UHF Channels	7
Launch Delays	Approval for power upgrades and colocation have been delayed by the ITFS freeze, for two years.
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	We compete with several cable systems, most notably Times Mirror. It has approximately 50% penetration, and 52 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap or about 750,000.
Homes in Signal Area	750,000 are in the coverage pattern. 10% are blocked.
Customers after one year	50,000 Projected.
Customers after three years	120,000 Projected.
Customers after five years	150,000 Projected.

Kansas City

System Launch Date	We anticipate a launch date of March, 1995
Channels Under License or Lease	24
Channels that may be added	8
VHF/UHF Channels	7
Launch Delays	The market launch has been slowed in part because of the delay in gaining approval for power upgrades and colocation because of the two year ITFS freeze
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	We will compete with several cable systems, most notably Crown and Continental. Each has approximately 50% penetration, and 40 to 52 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap, about 705,000.
Homes in Signal Area	750,000 are in the coverage pattern. 25% are blocked.
Customers after one year	50,000 Projected.
Customers after three years	100,000 Projected.
Customers after five years	125,000 Projected.

Baltimore System

System Launch Date	We hope to launch the system in December, 1994.
Channels Under License or Lease	26
Channels that may be added	6
VHF/UHF Channels	10
Launch Delays	The approval for power upgrades and colocation have been delayed by the ITFS freeze, for two years.
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	We compete with several cable systems, most notably Comcast. It has approximately 50% penetration, and 52 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap, about 880,000.
Homes in Signal Area	880,00 in the coverage pattern, 25% are blocked.
Customers after one year	50,000 Projected.
Customers after three years	100,000 Projected.
Customers after five years	125,000 Projected.

Indianapolis

System Launch Date	The target date for our launch is March, 1995.
Channels Under License or Lease	17
Channels that may be added	14
VHF/UHF Channels	7
Launch Delays	Approval for power upgrades and colocation have been delayed by the ITFS freeze, for two years.
Digital Compression	We anticipate using digital compression as soon as it is available. We project that a fully digitized system will be deployed, with no hybridization.
Competitors	We compete with several cable systems, most notably Comcast. It has approximately 50% penetration, and 52 channel capacity. We believe it will be approximately two years before our system will be competitive in all areas. The organization must be built to serve the entire market.
Amount of Overlap	Approximately 99% of our homes overlap, about 450,000.
Homes in Signal Area	450,000 are in the coverage pattern. 25% are blocked.
Customers after one year	40,000 Projected.
Customers after three years	80,000 Projected.
Customers after five years	100,000 Projected.

The information contained in my comments is accurate and complete to the best of my knowledge. If you have any further questions, or People's Choice can be of any assistance in your review of the wireless cable industry, please do not hesitate to contact me at (203) 929-2800.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "M Oristano", written over a horizontal line.

Matthew Oristano
Chief Executive Officer
People's Choice TV Corporation